



FRAUD WATCH



A Publication of the Workers' Compensation Fraud Prevention & Compliance Unit

Issue Number 8

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CHIEF'S MESSAGE

The *Workers' Compensation Fraud Prevention and Compliance Unit* is the new name of our Unit. The name change is the result of a recent merging of two individual Units within the Workers' Compensation Division of the Department of Labor and Training; the *Fraud Prevention Unit* and the *Compliance Unit*. This change was brought about for several reasons, among which are: (1) To better coordinate resources in a more aggressive approach in the identification of businesses operating without insurance; (2) To transform our record-keeping programs into a single unified comprehensive case-management system; and (3) To more effectively carry out the mandates of prevention, investigation, enforcement, and compliance.

The *Workers' Compensation Fraud Prevention and Compliance Unit* is the agency where all allegations of wrongdoing in the workers' compensation system are received and investigated. Each fraud allegation is reviewed and when warranted, an investigation pursued. Our Unit will make referrals to the Department of Attorney General in those cases where there is evidence to believe a crime has been or is being committed.

In 2002 twelve (12) cases were forwarded to the Department of Attorney General. Two (2) of these cases were criminally charged and were disposed of through a restitution agreement. Five (5) cases are pending review by the Attorney General's Department and five (5) were criminally charged and await court disposition. The resolved criminal cases resulted in court ordered restitution of \$10,508.13 to insurers. An additional five (5) cases remain before the criminal courts, and another four (4) await grand jury action.

If we can be of service to you or if you have a question, please feel free to contact a member of our Unit for assistance.

David B. Groeneveld, CFE

OUT ON A LIMB

A Cranston man who was a material handler at a grain store claimed that he sustained a lumbosacral strain and hernia in February 1998. He began collecting workers' compensation benefits immediately for a temporary partial disability. In 1999, he was observed becoming involved with a tree trimming business. He even drove a truck that announced his tree service. Beacon Mutual Insurance Company sent a Report of Earnings form to the employee and he claimed no work and no wages.



Surveillance was done in January 2000 by two private investigators that contacted him on a pretext to do actual tree work. The subject gave a signed, handwritten estimate on his letterhead to the two investigators. He began work for them in February 2000 and he was video taped in the trees for two days. He had with him all of his equipment and gear for professional tree cutting. He was paid with a personal check. Beacon Mutual Insurance Company sent him a second Report of Earnings, which he received but never returned to the Insurance Company.

(Continued inside)

HIGHLIGHTS

- CHIEF'S MESSAGE
- LEGAL CORNER
- RESOLVED CRIMINAL & COMPLIANCE CASES
- COMPLIANCE / INDEPENDENT CONTRACTORS
- INVESTIGATOR'S TIP
- BLOCK BUSTER DAY

Legal Corner

Technology, Fraud Documentation & Perseverance Prove Key to Successful Fraud Investigation



Several years ago an insurer, through routine surveillance, found a claimant engaging in what appeared to be work activities at a local garage. The business owner, when confronted, turned out to be a family member who stated the employee was not being compensated. With the medical documentation present, the work activities were not a sufficient basis to terminate benefits, and the Fraud Unit did not proceed with an investigation. However, unlike many fraud investigations, this did not prove to be the end of the story.

The Claims Adjuster “red flagged” the case when a new injury report on this same claimant was received by the insurer. The claimant was working for another business while collecting benefits. The case was again referred to the Fraud Unit. A new tool was now available to the Fraud investigator; a computer cross match between wage records and workers’ compensation benefits. The check revealed several employers and wage records for the claimant, as well as the use of four social security numbers.

The Fraud investigator followed up on all employer information. At this point the adjuster’s fraud documentation on the claim became critical. A review of the file revealed that the adjuster had ensured that Report of Earnings forms (ROE’S) were sent out periodically. ROE’S not returned had been followed up with a second ROE sent with a benefit check. The claimant’s endorsement on the benefit check was used to prove the claimant’s receipt of the ROE. Benefit checks contained the required check endorsement language and were also sent with the required check endorsement notice. Independent Medical Examinations (IME’S) had been conducted asking the Fraud Unit’s recommended “IME Questions”.

The end result – a criminal complaint with multiple workers’ compensation fraud charges and a clear message that workers’ compensation fraud can be combated when all involved parties take advantage of the fraud fighting tools available.

Julie Tamuleviz Kard, Esq.

2002 LEGISLATIVE UPDATE

The Rhode Island Legislature amended R.I.G.L. 42-16.1-14, “Disclosure of Information to the Fraud Unit”, in 2002. The procedural amendment further clarifies the obligation of insurers, agents authorized by insurers, third party administrators and self-insurers to respond to requests for information from the Fraud Unit relative to a fraud investigation.

Fraud Watch is published bi-annually by the Workers’ Compensation Fraud Prevention & Compliance Unit Staff

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RESOLVED CRIMINAL CASES

(Continued from front) Out on a Limb

He was also seen by an Independent Medical Examiner (IME) in April 2000, and he professed that he has not worked since his February 1998 injury, and that his time is spent doing housework. He said that he could barely drive.

The Insurance Company filed a Petition to Review in Workers' Compensation Court and his benefits were suspended on May 30, 2000. He pled guilty to a charge of obtaining money under false pretenses, three counts of false statements to a treating physician, and one count of filing a false document. Restitution was made in the amount of over \$9,000 to the Insurance Company and to the Fraud Unit.

ONE CHANCE ONLY

Not all criminal cases are prosecuted. This Central Falls subject immediately let the Attorney General's office know that he would make full restitution to both the Fraud Unit and Wausau Insurance. He admitted to his mistake and paid what he owed to both offices. He said that he didn't want "to be in any trouble" and his total damages amounted to \$1,002.16, paid in full.



From the Desk of Diane Scimone
Management & Methods Analyst

There are currently 13,701 independent contractor forms on file with the Division of Workers' Compensation. Under R.I.G.L. 28-29-17.1, a person will not be considered an "independent contractor" (for purposes of workers' compensation only), unless that person files a notice of designation with DLT's Workers' Compensation Unit. If the person does not file the notice of designation, the individual will be treated as an employee for workers' compensation premium insurance purposes. The DWC 11-IC Notice of Designation form will remain in effect while the independent contractor is working for the named hiring entity or until a "Notice of Withdrawal" form is received and date stamped. Forms are only valid that have been received, processed, and date stamped by the department. There are an average of about forty six (46) forms received per day for independent contractor status. There is an average of five (5) withdrawal forms on file.

For further information, contact Diane Scimone at 401-462-8081, or e-mail dscimone@dlt.state.ri.us.

NOTICE TO EMPLOYERS

Every employer subject to the Workers' Compensation Act must display a copy of the Workers' Compensation Act poster. The poster must be posted, maintained, and kept up to date in conspicuous places where workers can see it. Check your insurance policy package for the poster. Access www.dlt.state.ri.us/wc for poster information

***Under Rhode Island General Law 28-29-13, an employer
can be assessed a penalty fine if they fail to post the poster.***

FAILURE OF EMPLOYERS TO CARRY WORKERS' COMPENSATION INSURANCE



FIVE YEARS LATE

DESIGNS INTERNATIONAL, INC., a Johnston manufacturing company of fine jewelry, was found to be in violation of the law. Investigation was precipitated by an injured employee's claim for injury. A hearing was scheduled in March 2002, and the employer was invited to bring any documents that would show that they had the necessary insurance. The Fraud and Compliance Unit's records show that the employer had failed to obtain workers' compensation insurance coverage for the period July 1, 1998 to February 27, 2002.

The manufacturing company obtained insurance for the current year on February 27, 2002. Regardless, there was still a period where they operated without the required insurance. The Department issued an order requiring that the employer pay an administrative penalty in the amount of \$100,273.

The employer appealed the director's decision to the Workers' Compensation Court. Prior to the case being heard in Court, an agreement was made between the Department and the manufacturing company of settlement. On July 22, 2002, a check was received for \$30,000 for a full and fair settlement amount.

NOT ENOUGH MULCH



An employee claimed an injury on August 6, 2001 when employed by VIOLET HILL LANDSCAPING Company. The Fraud and Compliance Unit had evidence that the Smithfield company had cancelled their workers' compensation insurance on June 25, 2001. The employer had failed to maintain workers' compensation insurance.

Because the employer did not have coverage from June 25, 2001 to September 21, 2001, a hearing took place at the Department on January 15, 2002. An order was written for an administrative penalty of \$2,075. Employer appealed the determination, and a Miscellaneous Petition

was prepared for Workers' Compensation Court. Prior to going to Court, the employer showed cooperation with the Department. The matter was resolved in June 2002, in the sum of \$1500. It was taken into consideration that the employer obtained the needed insurance.

CASE DISPOSAL



An order was issued on January 23, 2002 that NUNES DISPOSAL, INC. should obtain and secure workers' compensation insurance coverage. An employee with a serious leg injury had filed a claim for workers' compensation insurance benefits on September 26, 2001.

During the period of May 9, 2001 to September 26, 2001, the Cumberland employer had failed to secure insurance. An administrative penalty was assessed against the uninsured employer. The matter was heard in Workers' Compensation Court, and in a Consent Decree dated April 3, 2002, the employer agreed to pay the Department \$3,500 in administrative penalties. The employer also agreed to continuously keep and maintain workers' compensation insurance coverage.

NARRAGANSETT RUBBISH

An administrative penalty of \$22,500 was assessed against PIER SOLID WASTE MANAGEMENT, INC. of Narragansett for failure to secure workers' compensation insurance coverage from April 1, 1999 to March 31, 2001. The employer no longer had employees after March 31, 2001. The employer filed an appeal against the Department in Workers' Compensation Court.

The employer testified before the Court that he currently had no employees. In a Consent Decree signed in February 2002, it was ordered that the employer pay an administrative penalty of \$10,000 and maintain workers' compensation insurance coverage if and when employees are again hired.

EMPLOYEE FATALITY

In a very unfortunate accident that involved a driver for New England Frozen Lemonade, it was found that the company did not have workers' compensation insurance coverage. On August 5, 2001, the lemonade truck was hit by another car, and the driver for New England Frozen Lemonade was killed.

There was no record for insurance coverage between April 1, 2000 and August 26, 2001. The employer obtained coverage on August 27, 2001. In a Department hearing held on January 30, 2002, it was ordered that the employer pay a penalty of \$9,000.

The Department hearing was appealed to Workers' Compensation Court and a Consent Decree was issued. The total penalty payments of \$5,000 as ordered by the Court were made to the Department of Labor and Training in June 2002.

FURRIER NOT COVERED

Cranston furrier, TOLCHINSKY'S FURS LTD., a RI company that has been in business for over 84 years, was found not to have workers' compensation insurance coverage. A Department hearing was held on April 30, 2002. At that time, the employer had applied for workers' compensation insurance coverage. On May 1, 2002, a hearing officer assessed a penalty against the company for over \$7,000 for failure to carry coverage.

The furrier appealed the decision to the Workers' Compensation Court. Before this was heard in Court, the Department resolved the matter with the employer for \$2,200.

MEETING WITH RAPA

by Compliance Investigator June Alves

On 9/17/02 I met with the RI Association of Public Accountants (RAPA) at Chelo's in Warwick, RI. At that meeting, I spoke about the Designation as Independent Contractor form for purposes of workers' compensation insurance coverage. Since becoming effective January 1, 2001, independent contractors must file a DWC 11-IC Notice of Designation as Independent

Contractor form. These forms are not valid until received and date stamped by this department.

There are currently over 13,000 Independent Contractor forms on file. The name and address of the independent contractor as well as the name and address of the hiring entity and the date filed is public information. Available on our website, www.dlt.state.ri.us/wc is the name of the independent contractor, the hiring entity's name and the date the form was filed and/or rescinded. Also available are FAQ's and the site of the law, RIGL section 28-29-17.1 that pertains to independent contractors.

Filing of this form means that the individual is not covered under a workers' compensation insurance policy and is not eligible for benefits should they become injured. The form is only for workers' compensation purposes. It does not mean that the person is considered an independent contractor by the Division of Taxation, or the IRS.

This Department receives the form and inspects it for legibility and completeness and does not make a decision as to whether the individual named does in fact meet the rules, regulations or statutes of the Internal Revenue Service (800-829-1040) or the RI Division of Taxation (401-222-3682). Those agencies should be contacted directly should there be any questions regarding an individual's independent contractor status according to those specific rules, regulations or statutes.



(L to R) George Bowen, President of RAP; June Alves, Investigator, DLT / WC Fraud & Compliance Unit; Joseph Calabrese, Farmington Insurance Agency and Education Chair of RAPA

INVESTIGATOR'S TIP**'ASKED AND ANSWERED'***by Investigator Terrence M. Hassett*

How many cases have you prosecuted? How many people are sent to jail? How do cases get started? These questions and many more are widely discussed in seminars attended by employers, insurance carriers and others with an interest in workers' compensation.

The Education Unit of the Department of Labor and Training successfully presents and educates in a variety of fields associated with workers' compensation. Among the subjects are fraud and insurance compliance. With a unit whose charge it is to address both of these areas, fraud investigators are often welcome speakers at the seminars.

We hope insurance carriers act on some of the advice often offered at the seminars. We hope that employers keep abreast of the importance of this advice.

Here are some of the questions that need to be asked and answered:

Q: Has an employee been asked regularly to complete a Report of Earnings form during a period of workers' compensation benefits?

A: Carefully monitoring the earnings of an employee who is receiving workers' compensation benefits accomplishes at least two objectives: 1) the employee becomes familiar with the responsibility to report outside earnings while the insurer may evaluate whether an employee may have established an earnings capacity beyond their injured status; 2) for the less forthcoming employees, it documents statements that may be found to be inaccurate later on, thus triggering further scrutiny and perhaps a fraud investigation.

Q: What is the importance of the IME questions?

A: During evaluations designed to determine the physical status of an injured worker through an



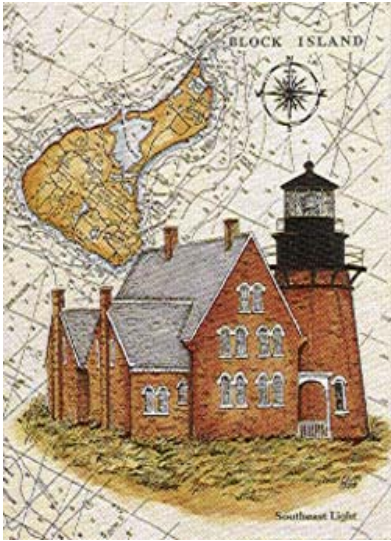
(Investigator Terrence M. Hassett speaking before a workshop for the Education Unit)

independent medical exam the four (4) "IME" questions should be asked and answered. It is important that doctors conducting these examinations ask the following questions:

- 1) *Have you returned to work since your injury?*
- 2) *Have you worked in ANY capacity since your injury?*
- 3) *What type of physical activities do you engage in?*
- 4) *What do you do on a daily basis?*

So in answer to how many cases have been prosecuted? The answer is **one hundred, twenty-four (124)** cases since 1993. Our fraud cases have been criminally resolved with sentences extending to ten (10) years probation; community service; fines, restitution, as well as jail sentences resulting in home confinement and probation. In answer to how do we get the cases, the answer is from YOU.

A BLOCK BUSTER DAY



Imagine that it is 7:30 am and you are dressed for a typical August day's work in the life of a workers' compensation fraud investigator. This day will start a little differently as you race down Escape Road in Galilee to get to the Block Island Ferry. It is going to be a perfect day for a workers' compensation business sweep. Investigator James Gibbs was lucky enough to get Block Island for his business sweep. He invited Investigator Terrence Hassett to accompany him on this trip. Where the heck is Block Island?

The Block is twelve miles off the coast of Rhode Island. You can get there by boat or plane. The wise investigators caught the 8:00 am Hi-Speed Catamaran Ferry that took thirty minutes to get to work on time. The sun is moving to the west over Block Island's North Light. It is a beautiful day and the bluffs are getting closer and they have hit New Harbor. The regular but slower ferry docks in the center of town at Old Harbor. The Block discourages people from bringing their own car, so the best way to get around is by bicycle or walking. Walking into town, they visited businesses along the way before stopping at the National Hotel for their coffee and planned strategy for the day.

Block Island is a secluded three miles across island. In the summer time, there are over 15,000 summer people. In the wintertime, there is a population of less than 900 people. Our investigators were there to check for employer and insurer compliance with the Workers' Compensation Act. That included verifying workers' compensation insurance coverage; checking on the posting of workers' compensation posters; answering any and all questions pertaining to workers' compensation and independent contractors, corporate officers, or the law in general.

The Fraud Unit began this new project in October 2001. One day a month seven investigators cover 6-7 cities and towns. The thrust is to visit individual businesses and check on their needed insurance and posters. The focus has been on those who do not have insurance, need insurance, and will be penalized for not having insurance.

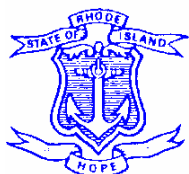
Investigator Gibbs began the investigation of Block Island in March 2002. He used a computer generated zip code list of all businesses on Block Island. "02807" brought up 190 businesses. Of the 190 businesses, 80 businesses already had insurance coverage. There are approximately 28 clothes and jewelry shops; 10 liquor stores; 13 fishing or sail charter businesses; three marinas, two book stores; seven art galleries; grocery stores; bike rental shops and a lot of places to eat. The investigators found something like 22 casual restaurants and a nice handful of fine dining places. Open all year are grocery stores, gas stations, an elementary school, and even a newspaper. There are no fast food chains on Block Island.

The Island has one insurance company and a few real estate companies. What the investigators found were that a number of employers did not realize that they needed insurance for one or more employees especially if they were only seasonal, and most employers did not have that poster up for their employees information. A few employers said they didn't have employees, and an explanation was needed for what constitutes the word "employee."

The investigators on this no dress code island were a bit conspicuous, but they had a wonderful reception and great cooperation from the employers they visited. They saw over 30 employers, and all but one had the required insurance. Not all businesses were visited, but over 25 workers' compensation insurance policies were generated with over \$35,000 in insurance premiums.

Of course, not all sweeps will be this much fun, but there is always next year.

by Nancy Kolman Ventrone



**The Department of Labor and Training
Workers' Compensation Fraud Prevention
and Compliance Unit**

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Have a Safe & Happy New Year

For fraud and compliance case referrals or other information, call:

Hotline: (401) 462-8110
E-mail: wcfraud@dlt.state.ri.us
Website: www.dlt.state.ri.us/wc

Please send news items, suggestions, and mailing address changes to:

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